

ARKANSAS SUPREME COURT

No. CR 07-683

ROSS LAMAR BURNETT, SR.
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered February 28, 2007

APPEAL FROM THE CIRCUIT
COURT OF DREW COUNTY, CR
2001-55, HON. SAMUEL B. POPE,
JUDGE; MOTION TO WITHDRAW
AS COUNSEL

WRIT OF CERTIORARI ISSUED
AND REBRIEFING ORDERED.

PER CURIAM

Appellant was convicted of capital murder, and this court affirmed the judgment. *Burnett v. State*, CR 02-336 (Ark. Jun. 26, 2003) (per curiam). Appellant filed in the trial court a petition for postconviction relief under Ark. R. Crim. P. 37.1, which was denied. Counsel representing appellant, Mr. John W. Cone, has submitted a brief to this court in which he contends that there is no merit to the appeal and requests permission to withdraw as counsel.

Anders v. California, 386 U.S. 738 (1967), and Arkansas Supreme Court Rule 4-3(j)(1) set requirements for the withdrawal of counsel for a defendant in a criminal case after a notice of appeal has been filed on the basis that an appeal is without merit. While a “no-merit” brief is typically filed in a direct appeal from a judgment, this court permits the filing of no-merit briefs in postconviction appeals. *See Hewitt v. State*, 362 Ark. 369, 208 S.W.3d 185 (2005) (per curiam); *Brady v. State*, 346 Ark. 298, 57 S.W.3d 691 (2001) (per curiam). Our clerk provided appellant with a copy of appellant’s brief and motion as required by Rule 4-3(j), and appellant has submitted points for

reversal. The State has filed its response to those points, and the case is now before us. A cursory review of the brief and record, however, indicate that both are inadequate for our review.

Counsel's brief fails to contain any abstract of the trial record as required to conform with Ark. Sup. Ct. R. 4-2(a)(5). It is true that, as a part of the public record already filed with the appellate court in the earlier appeal, the trial record is included as a part of the record before us. *See Drymon v. State*, 327 Ark. 375, 938 S.W.2d 825 (1997). While the record is not deficient on that point, the trial record must be abstracted on appeal from an order denying postconviction relief where the issues include allegations of ineffective assistance of counsel, as they do here. In determining a claim of ineffective assistance of counsel, the totality of the evidence before the factfinder must be considered. *Greene v. State*, 356 Ark. 59, 146 S.W.3d 871 (2004). This court must be provided with an abstract and addendum sufficient to conduct a meaningful review. *Campbell v. State*, 349 Ark. 111, 76 S.W.3d 271 (2002).

The brief also fails to list the rulings made by the trial court that were adverse to appellant or to address each of those rulings as required by Rule 4-3(j)(1). Instead, counsel has argued that appellant's arguments lacked merit, without organizing those arguments in association with the trial court's rulings in its order. We are unable to determine whether counsel has addressed each of those rulings as required.

The addendum in the brief is deficient as well. The only documents provided in the addendum are the order denying postconviction relief and the notice of appeal. The order references an original petition filed on August 22, 2003, as amended. The addendum should contain the original petition and any amendments to the petition, as those items are relevant pleadings or documents essential to an understanding of the case and this court's jurisdiction on appeal. *See* Ark. Sup. Ct. R. 4-2(a)(8).

Moreover, the record does not contain the original petition or other relevant documents. The docket sheet contained in the record includes entries for a petition on August 22, 2003, and a response, an answer, a motion to amend, and other possibly relevant documents filed prior to the motion to amend that is included in the record now before us. Under Ark. R. App. P.--Civ. 6(e), as applied through Ark. R. App. P.--Crim. 4(a), we therefore issue a writ of certiorari to bring up the omitted items from August 22, 2003, forward, within thirty days from the date of this order.

We instruct our clerk to set a new briefing schedule once we have received the supplemental record. Counsel is directed to provide a new brief in compliance with our rules as set out above.

Writ of certiorari issued and rebriefing ordered.